IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 8 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION BANK OF INDIA

Versus

ARAVELI FINLEASE LTD.

Appearance:

1. COMPANY PETITION No. 8 of 2000

MR SS PANESAR for Petitioner.

MR ASHOK L SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 06/04/2005

ORAL JUDGEMENT

The petitioner, Union Bank of India has filed this petition under Section 433 (e) read with Section 434 of the Companies Act, 1956 for winding up of the

respondent Company.

2. It is the case of the petitioner that during July 1993, the respondent Company through its Directors approached the petitioner Bank for granting financial assistance by way of Cash Credit against hypothecation of various vehicles and other assets for development of their Lease Finance Business. Accordingly, the petitioner Bank during July 1993 lent and advanced Cash Credit limit of Rs. 50 Lacs to the respondent Company against hypothecation of movable assets. Thereafter, request was made by the respondent Company to sanction more loans and accordingly, during the year 1994, the petitioner Bank has enhanced the said financial assistance to Rs. 1 Crore on 28.04.1994. It is also the case of the petitioner that the respondent Company has also executed balance confirmation letters on 01.04.1996 and 03.04.1997 in favour of the petitioners. Despite the aforesaid amount was payable by the respondent Company to the petitioner, the amount has not been paid and hence, the petitioner issued statutory notice on the respondent Company on 24.12.1999 claiming the outstanding amount of Rs. 1,07,47,730.27 together with interest at 19.38% from 01.10.1999 till the date of payment to the petitioner Bank. Despite service of notice, neither any payment was made nor any reply was received by the respondent Company. Hence, the petitioner has approached this Court by way of present winding up petition.

3. This Court has issued notice on 02.02.2000. On service of notice, the respondent Company has filed its appearance and also reply was filed. The petitioner thereafter filed rejoinder to the reply filed by the respondent Company. This Court has passed an order on 27.06.2001 wherein the Court has admitted the petition and granted ad-interim relief in terms of para 19 (D) of the petition. By virtue of that order, the respondent Company was restrained from alienating and transferring, dealing with or creating any third party rights in any manner whatsoever in respect of all the movable and immovable assets of the Company or any part thereof and from realising and recovering any outstanding dues from the debtors of the Company in any manner whatsoever. The Court has, however, clarified in the said order that the said ad-interim relief would not affect the stock-in-trade goods and the instruments given by way of lease to third party. The Court, therefore, passed another order on 23.07.2001 wherein this Court has observed that on filing reply, order of admission shall be revoked. The Court has, thereafter, considered the reply filed by the respondent Company and also rejoinder

of the petitioner and again admitted the petition on 22.12.2004. The order regarding advertisement was also passed on that day and the petition was ordered to be advertised in "Jansatta" - Gujarati Daily and "Indian Express" - English Daily - both Ahmedabad editions. The Manager, Government Printing Press, Rajkot was directed to publish the advertisement which might be furnished by the petitioner, within two weeks from the date of receipt of the draft from the petitioner.

4. On 23.02.2005, Mr. S.S. Panesar, learned advocate appearing for the petitioner Bank, under the instruction of Officer of the petitioner Bank who was present in the Court has submitted that despite the order of this Court, the advertisement was not published in Official Gazette. Initially, the Government Press was not accepting the order of this Court. However, it has been communicated that subsequently it was accepted. The advertisement in the Official Gazette was published thereafter and necessary affidavit and relevant newspaper cuttings were also produced and hence, the petition was kept for final hearing on 24.03.2005.

5. Mr. S.S. Panesar, learned advocate appearing for the petitioner Bank has submitted that more than Rs. 1 Crore are due and payable by the respondent Company and the amount has not been paid. He has further submitted that the respondent Company is not in a position to discharge its debts and financial substratum of the respondent Company has been totally lost. The respondent Company is merely a finance company. Over and above the petitioner's dues, there are other Creditors also and the Company has failed to discharge its liabilities. It is, therefore, just and fair and in the interest of all that the respondent Company be wound up by an order of this Court.

6. Mr. Ashok L. Shah, learned advocate appearing for the respondent Company has submitted that there are several arguable points in favour of the respondent Company. He has relied on the reply which was filed and submitted that simply on the basis of the temporary financial crunch, the Company cannot be wound up. However, he has fairly submitted that despite all sincere efforts made by the Company for its revival, the Company is not in a position to make any payment in the matter and there is no possibility for the Company to revive it again. Even otherwise, looking to the present financial market and rate of interest which is heavily gone down, it is not possible for the Company to come out from financial crunch. He has, therefore, submitted that the

respondent Company is not in a position to discharge its liabilities.

7. After having heard learned advocates appearing for the respective parties and after having gone through the pleadings as contained in the petition, reply and rejoinder as well as the documents attached therewith, the Court is of the view that there is no denial of the fact that huge amount of Rs. 1 Crore and more is outstanding and the respondent Company is liable to pay the said amount to the petitioner Bank. It is also an admitted position that the respondent Company has not discharged the said liability and hence, it has failed and neglected to pay the said liability to the petitioner. Though this petition is pending for the last about 5 years and sincere efforts were made for settlement and negotiation, ultimately all these efforts have failed and there is no scope for revival. There is no material on record which would justify that there is any scope for revival of the respondent Company. The Court is, therefore, of the view that there was not only temporary financial crunch, but it has become permanent feature. On the contrary, the Company is sick and there is no chance of revival of the Company. It is, therefore, just and proper that the respondent Company be would up.

8. Accordingly, the respondent Company is hereby ordered to be wound up. The Official Liquidator attached to this Court is hereby appointed as the Liquidator of the respondent Company and is directed to take charge of the assets and properties of the respondent Company. It is, however, clarified that before taking charge of the assets of the Company, the O.L. shall intimate to the petitioner being Secured Creditor as well as the Directors of the respondent Company and before appointing Valuer or Security Agency, prior permission of this Court is required to be obtained.

9. With the aforesaid direction and observation, this petition is allowed. There shall be no order as to costs.

[K.A. PUJ, J.]

#Savariya#

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